

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:	)	<b>Mail Stop Appeal Brief – Patents</b>
	)	
Craig D. CHURCH	)	Group Art Unit: 3625
	)	
Application No.: 10/774,372	)	Examiner: William J. ALLEN
	)	
Filed: February 10, 2004	)	
	)	
For: APPARATUS AND METHOD FOR	)	
LOCATING ITEMS	)	

**APPEAL BRIEF**

U.S. Patent and Trademark Office  
Customer Window, Mail Stop Appeal Brief – Patents  
Randolph Building  
401 Dulany Street  
Alexandria, Virginia 22314

Sir:

This Appeal Brief is submitted in response to the Final rejection mailed May 8, 2007 and  
in support of the Notice of Appeal filed August 8, 2007.

**I. REAL PARTY IN INTEREST**

The real party in interest in this appeal is Verizon Business Global LLC, a wholly-owned subsidiary of Verizon Communications Inc.

**II. RELATED APPEALS AND INTERFERENCES**

Appellant is unaware of any related appeals, interferences or judicial proceedings.

**III. STATUS OF CLAIMS****A. Rejected Claims**

1. Claims 1, 4, 7, 11, 12, 18, 20, 21, 23, 24, and 42-49 have been rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,317,718 to Fano (Fano) in view of U.S. Patent No. 6,937,998 to Swartz et al. (Swartz).

2. Claims 10, 14, 15, 19, and 25 have been rejected under 35 U.S.C. § 103(a) as unpatentable over Fano in view of Swartz and further in view of U.S. Patent Application Publication No. 2002/0194081 to Perkowski (Perkowski).

3. Claim 16 has been rejected under 35 U.S.C. § 103(a) as unpatentable over Fano in view of Swartz and further in view of U.S. Patent Application Publication No. 2002/0138372 to Ludtke (Ludtke).

4. Claims 17 and 26 have been rejected under 35 U.S.C. § 103(a) as unpatentable over Fano in view of Swartz and further in view of U.S. Patent Publication No. 2003/0027555 to Malackowski et al. (Malackowski).

**B. Canceled Claims**

Claims 2, 3, 5, 6, 8, 9, 13, 22, and 27-41 have been previously canceled without prejudice or disclaimer.

**C. Appealed Claims**

Claims 1, 4, 7, 10-12, 14-21, 23-26, and 42-49 are the subject of the present appeal.

**IV. STATUS OF AMENDMENTS**

No Amendment has been filed subsequent to the Final Office Action mailed May 8, 2007.

**V. SUMMARY OF THE CLAIMED SUBJECT MATTER**

Each of the independent claims involved in this appeal is recited below, followed in parenthesis by examples of where support can be found in the specification and drawings for the claimed subject matter. In addition, each dependent claim argued separately below is also summarized in a similar manner.

Claim 1 is directed to a method comprising: determining whether a portable device is or is not located within a first site (e.g., p. 13, ¶ 42, lines 1-2; p. 14, ¶ 43, lines 1-3; FIG. 6A, block 604; p. 11, ¶ 34, lines 1-2 and 9-13; p. 11, ¶ 35, lines 1-4; FIG. 5A, block 504); wherein when the portable device is located within the first site: sending a menu of items located at the first site to the portable device (e.g., p. 14, ¶ 46, lines 1-3; FIG. 6B, block 620; p. 11, ¶ 35, lines 1-2; p. 11, ¶ 35, lines 5-6; FIG. 5A, block 505) for displaying (e.g., FIG. 3, element 304; FIG. 4, element 304) to a user, receiving from the portable device, a selection by the user of at least one item from the menu of items located at the first site (e.g., p. 14, ¶ 44, line 1; FIG. 6A, block 610; page 15, ¶ 47, lines 1-2; FIG. 6B, block 624; page 12, ¶ 36, lines 6-9; FIG. 5B, block 518), and sending location information regarding the at least one item selected from the menu of items at the first site to the portable device (e.g., p. 15, ¶ 47, lines 2-4 and 6-9; FIG. 6B, blocks 626, 630, and 632; p. 12, lines 8-9) for displaying (e.g., FIG. 3, element 306; FIG. 4, element 306) to the user; and wherein when the portable device is not located within the first site: sending to the portable device a menu of sites located within a vicinity of the portable device (e.g., p. 14, ¶ 45, lines 1-4; FIG. 6B, block 618; p. 12, ¶ 36, lines 1-3) for displaying (e.g., FIG. 3, element 302) to the user, and receiving from the portable device a selection of a second site from the menu of

sites by the user (e.g., p. 14, ¶ 46, lines 1-5; FIG. 6B, block 620 and 622; p. 12, ¶ 36, lines 3-5; FIG. 5B, block 514).

Claim 11 is directed to a method that ultimately relies on claim 1, wherein the location information includes a location of each of the at least one selected item from the menu of items from the first site or the second site (e.g., FIG. 3, element 306).

Claim 12 is directed to a portable device comprising: processing logic (e.g., FIG. 2, element 220; p. 6, ¶ 23, lines 1-2); an input device (e.g., FIG. 2, element 260; p. 6, ¶ 24, lines 1-3) coupled to the processing logic; a display (e.g., FIG. 2, element 270, p. 6, ¶ 24, lines 3-5; FIG. 3, elements 302, 304, and 306; FIG. 4, elements 402, 404, 302, and 306) coupled to the processing logic; and a wireless communication interface (e.g., FIG. 2, element 280; p. 7, ¶ 24, lines 5-10) coupled to the processing logic, wherein the processing logic: determines whether the portable device is or is not located within a first site (e.g., p. 13, ¶ 42, lines 1-2; p. 14, ¶ 43, lines 1-3; FIG. 6A, block 604; p. 11, ¶ 34, lines 1-2 and 9-13; p. 11, ¶ 35, lines 1-4; FIG. 5A, block 504); wherein when the portable device is located within the first site, the portable device: receives a menu of items located at the first site (e.g., p. 14, ¶ 46, lines 1-3; FIG. 6B, block 620; p. 11, ¶ 35, lines 1-2; p. 11, ¶ 35, lines 5-6; FIG. 5A, block 505) for displaying to a user on the display (e.g., p. 11, ¶ 35, lines 1-2; p. 11, ¶ 35, lines 5-6; FIG. 5A, block 505; p. 14, ¶ 46, lines 1-3; FIG. 6B, block 620), receives a selection by the user of at least one item from the menu of items located at the first site (e.g., p. 14, ¶ 44, line 1; FIG. 6A, block 610; page 15, ¶ 47, lines 1-2; FIG. 6B, block 624; page 12, ¶ 36, lines 6-9; FIG. 5B, block 518) and sends the selection of the at least one item from the menu of items located at the first site to a server (p. 14, ¶ 44, line 1; FIG. 6A, block 610; page 15, ¶ 47, lines 1-2; FIG. 6B, block 624; page 12, ¶ 36, lines 6-9;

FIG. 5B, block 518), and receives location information regarding the at least one item selected from the menu of items at the first site from the server (e.g., p. 15, ¶ 47, lines 2-4 and 6-9; FIG. 6B, blocks 626, 630, and 632; p. 12, lines 8-9) for displaying on the display (e.g., FIG. 3, element 306; FIG. 4, element 306); and wherein when the portable device is not located within the first site, the portable device: receives a menu of sites located within a vicinity of the portable device (e.g., p. 14, ¶ 45, lines 1-4; FIG. 6B, block 618; p. 12, ¶ 36, lines 1-3) for outputting to the display (e.g., FIG. 3, element 302), and receives a selection by the user of a second site from the menu of sites and sends to the server the selection of the second site (e.g., p. 14, ¶ 46, lines 1-5; FIG. 6B, block 620 and 622; p. 12, ¶ lines 3-5; FIG. 5B, block 514).

Claim 20 is directed to a system comprising: a server (e.g., FIG. 2, element 104, 106; p. 6, ¶ 22, lines 1-3) including: first processing logic (e.g., FIG. 2, element 220; p. 6, ¶ 23, lines 1-2), and a communication interface (e.g., FIG. 2, element 280; p. 7, ¶ 24, lines 5-10) connected to the first processing logic to communicate via one of a wireless connection or a wired connection, the first processing logic: determines whether a portable device is or is not located within a first site (e.g., p. 13, ¶ 42, lines 1-2; p. 14, ¶ 43, lines 1-3; FIG. 6A, block 604; p. 11, ¶ 34, lines 1-2 and 9-13; p. 11, ¶ 35, lines 1-4; FIG. 5A, block 504); wherein when the portable device is located within the first site, the first processing logic: sends a menu of items located at the first site to the portable device (e.g., p. 14, ¶ 46, lines 1-3; FIG. 6B, block 620; p. 11, ¶ 35, lines 1-2; p. 11, ¶ 35, lines 5-6; FIG. 5A, block 505) for displaying to a user (e.g., FIG. 3, element 304; FIG. 4, element 304), receives, from the portable device, a selection by the user of at least one item from the menu of items located at the first site (p. 14, ¶ 44, line 1; FIG. 6A, block 610; page 15, ¶ 47, lines 1-2; FIG. 6B, block 624; page 12, ¶ 36, lines 6-9; FIG. 5B, block 518), sends the



location information regarding the at least one item from the menu of items at the first site to the portable device (e.g., p. 15, ¶ 47, lines 2-4 and 6-9; FIG. 6B, blocks 626, 630, and 632; p. 12, lines 8-9) for display to the user (e.g., FIG. 3, element 306; FIG. 4, element 306); and wherein when the portable device is not located within the first site, the processing logic: sends to the portable device a menu of sites located within a vicinity of the portable device (e.g., p. 14, ¶ 45, lines 1-4; FIG. 6B, block 618; p. 12, ¶ 36, lines 1-3) for displaying to the user (e.g., FIG. 3, element 302), and receives, from the portable device, a selection of a second site from the menu of sites by the user (e.g., p. 14, ¶ 46, lines 1-5; FIG. 6B, block 620 and 622; p. 12, ¶ 36, lines 3-5; FIG. 5B, block 514).

Claim 45 is directed to a tangible computer-readable medium (e.g., FIG. 2, elements 230 and 250; p. 7, ¶ 25, lines 1-6) having a plurality of instructions for at least one processor (e.g., FIG. 2, element 220), wherein when the instructions are executed by the at least one processor (e.g., p. 7, ¶ 26, lines 1-4), the at least one processor performs the method comprising: determining whether a portable device is or is not located within a first site (e.g., p. 13, ¶ 42, lines 1-2; p. 14, ¶ 43, lines 1-3; FIG. 6A, block 604; p. 11, ¶ 34, lines 1-2 and 9-13; p. 11, ¶ 35, lines 1-4; FIG. 5A, block 504); wherein when the portable device is located within the first site: sending a menu of items located at the first site to the portable device (e.g., p. 14, ¶ 46, lines 1-3; FIG. 6B, block 620; p. 11, ¶ 35, lines 1-2; p. 11, ¶ 35, lines 5-6; FIG. 5A, block 505 ) for displaying to a user, receiving, from the portable device, a selection by the user of at least one item from the menu of items located at the first site (e.g., p. 14, ¶ 44, line 1; FIG. 6A, block 610; page 15, ¶ 47, lines 1-2; FIG. 6B, block 624; page 12, ¶ 36, lines 6-9; FIG. 5B, block 518), and sending location information regarding the at least one item selected from the menu of items at

the first site to the portable device (e.g., p. 15, ¶ 47, lines 2-4 and 6-9; FIG. 6B, blocks 626, 630, and 632; p. 12, lines 8-9 ) for displaying to the user (e.g., FIG. 3, element 306; FIG. 4, element 306); and wherein when the portable device is not located within the first site: sending to the portable device a menu of sites located within a vicinity of the portable device (e.g., p. 14, ¶ 45, lines 1-4; FIG. 6B, block 618; p. 12, ¶ 36, lines 1-3) for displaying to the user (e.g., FIG. 3, element 302), and receiving from the portable device a selection of a second site by the user (e.g., p. 14, ¶ 46, lines 1-5; FIG. 6B, block 620 and 622; p. 12, ¶ 36, lines 3-5; FIG. 5B, block 514).

Claim 48 is directed to a method comprising: determining whether a portable device is or is not located within a site (e.g., p. 13, ¶ 42, lines 1-2; p. 14, ¶ 43, lines 1-3; FIG. 6A, block 604; p. 11, ¶ 34, lines 1-2 and 9-13; p. 11, ¶ 35, lines 1-4; FIG. 5A, block 504); sending to the portable device, when the portable device is determined to be located within the site, a menu of items located at the site (e.g., p. 14, ¶ 46, lines 1-3; FIG. 6B, block 620; p. 11, ¶ 35, lines 1-2; p. 11, ¶ 35, lines 5-6; FIG. 5A, block 505) for displaying (e.g., FIG. 3, element 304; FIG. 4, element 304) to a user of the portable device; and sending to the portable device, when the portable device is determined not to be located within a site, a menu of sites located within a vicinity (e.g., p. 14, ¶ 45, lines 1-4; FIG. 6B, block 618; p. 12, ¶ 36, lines 1-3) of the portable device for displaying to the user (e.g., FIG. 3, element 302).

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Appellant respectfully requests that the following grounds of rejection be reviewed on appeal:

- A. The rejection of claims 1, 4, 7, 11, 12, 18, 20, 21, 23, 24, and 42-49 under 35 U.S.C. § 103(a) as obvious over Fano in view of Swartz;
- B. The rejection of claims 10, 14, 15, 19, and 25 under 35 U.S.C. § 103(a) as unpatentable over Fano in view of Swartz and Perkowski;
- C. The rejection of claim 16 under 35 U.S.C. § 103(a) as unpatentable over Fano in view of Swartz and Ludtke; and
- D. The rejection of claims 17 and 26 under 35 U.S.C. § 103(a) as unpatentable over Fano in view of Swartz and Malackowski.

**VII. ARGUMENTS**

The initial burden of establishing a prima facie basis to deny patentability to a claimed invention always rests upon the Examiner. In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In rejecting a claim under 35 U.S.C. § 103, the Examiner must provide a factual basis to support the conclusion of obviousness. In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967). Based upon the objective evidence of record, the Examiner is required to make the factual inquiries mandated by Graham v. John Deere Co., 86 S.Ct. 684, 383 U.S. 1, 148 USPQ 459 (1966). The Examiner is also required to explain how and why one having ordinary skill in the art would have been realistically motivated to modify an applied reference and/or combine applied references to arrive at the claimed invention. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).

**A. The rejection of claims 1, 4, 7, 11, 12, 18, 20, 21, 23, 24, and 42-49 under 35 U.S.C. § 103(a) should be reversed.**

Claims 1, 4, 7, 11, 12, 18, 20, 21, 23-24, and 42-49 stand rejected under 35 U.S.C. § 103(a) as obvious over Fano in view of Swartz. Appellant respectfully appeals these rejections.

**1. Claim 1**

Independent claim 1 recites:

A method comprising:  
determining whether a portable device is or is not located within a first site;  
wherein when the portable device is located within the first site:  
    sending a menu of items located at the first site to the portable device for displaying to a user,  
    receiving, from the portable device, a selection by the user of at

least one item from the menu of items located at the first site, and  
    sending location information regarding the at least one item  
selected from the menu of items at the first site to the portable device for  
displaying to the user; and  
    wherein when the portable device is not located within the first site:  
    sending to the portable device a menu of sites located within a  
vicinity of the portable device for displaying to the user, and  
    receiving from the portable device a selection of a second site from  
the menu of sites by the user.

The combination of Fano and Swartz does not disclose or suggest this combination of features.

For example, Fano does not disclose or suggest “sending location information regarding the at least one item selected from the menu of items at the first site to the portable device for displaying to the user,” as claimed. The Examiner cites to Fano, column 48, lines 22-25, alleging Fano discloses this feature. (See Final Office Action at p. 4.) This portion of Fano recites:

If an item displayed is selected by the shopper while browsing, the system alerts the shopper to the local retailer offering the same product for the lowest price, or announces the best local price.

The Examiner equates “alert[ing] the shopper to the local retailer offering the same product for the lowest price,” as disclosed in Fano with “sending location information regarding the . . . item selected from the menu of items at the first site,” as claimed. (See Final Office Action at p. 4.) In particular, the Examiner equates the “local retailer” in Fano with “location information” as claimed. (Id.) This reading of claim 1 onto Fano is incorrect.

First, as disclosed in Fano, “the item” selected by the shopper is not located at the “local retailer.” Instead, Fano discloses that the “same product” as “the item” selected by the shopper is at the “local retailer.” In other words, Fano discloses alerting the shopper to an alternate store carrying a product that is the same as the item selected by the user, i.e., a different store carrying a different item (albeit the different item is the same product as the selected item). Without

explanation, the Examiner acknowledges this distinction by stating that “alerting the user to an alternate 'local retailer' constitutes location information.” (Final Office Action at 4, underlining added here). Therefore, Fano does not disclose or suggest “sending location information regarding the at least one item selected from the menu of items at the first site,” as claimed in claim 1.

Appellant respectfully submits that the disclosure of Swartz does not cure the deficiencies of Fano described above with respect to claim 1. More specifically, Swartz discloses a “portable terminal carried by a user and in wireless communication with a local area network for displaying data based on the physical location of the user.” (See Abstract.) Swartz also discloses “base stations located in a common area . . . for general information gathering processes.” (Col. 9, lines 38-41.) Swartz does not disclose or suggest “sending location information regarding the at least one item selected from the menu of items at the first site to the portable device for displaying to the user,” as recited in claim 1. It should be noted that the Examiner does not contend that Swartz discloses or suggests this feature of claim 1.

In addition, Fano does not disclose or suggest “determining whether a portable device is or is not located within a first site,” as recited in claim 1. With respect to this feature, the Examiner cites to column 47, lines 20-24 of Fano, which states:

A preferred embodiment of a system utilizes a Windows CE PDA equipped with a GPS receiver. The embodiment is configured for a mall containing a plurality of stores. The system utilizes a GPS receiver to determine the user's location. One advantage of the system is that it enables the retrieval of data for nearby stores without relying on the presence of any special equipment at the mall itself. Although the accuracy of smaller, inexpensive receivers is limited to approximately 75-100 feet, this has thus far proven to be all that is necessary to identify accurately the immediately surrounding stores.

Appellant submits that neither this section nor any other section of Fano discloses or suggests determining whether a portable device is or is not located within a first site, as recited in claim 1. This section of Fano cited by the Examiner only discloses identifying “nearby stores” and “immediately surrounding stores.” In fact, the portion cited to by the Examiner discloses that, because of the limitations of the accuracy of receivers, the system in Fano only determines “nearby stores” and “immediately surrounding stores.” Thus, according to the reference itself, the system in Fano does not disclose “determining whether a portable device is or is not located within a first site,” as recited in claim 1 (underline added here). Indeed, Fano describes the technical limitations as an “advantage,” thus teaching away from “determining whether a portable device is or is not located within a first site,” as recited in claim 1. (See, e.g., Fano, col. 47, lines 20-24.)

With respect to this first element of claim 1, the Examiner equates “a store closest to the user” as allegedly taught in Fano with “a first site” as claimed (e.g., “[a] store closest to the user containing items of interest constitutes a first site.”) (See Final Office Action at p. 3.) The Examiner also equates “when the device is within range of the store having items of interest” as allegedly taught in Fano with “when the portable device is located within the first site,” as claimed. (Id.) The portion of Fano cited by the Examiner, discusses the “closest store:”

#### Browsing

To address the need of many shoppers to visit malls or shop generally without a particular destination in mind. FIG. 27 illustrates a display in accordance with a preferred embodiment of the invention. The display operates in a browse mode for use by shoppers as they stroll through the mall. In browse mode the system suggests items of interest for sale in the stores currently closest to the shopper. An item is considered to be of interest if it matches the categories entered in the goals screen. If there are no items of interest, the general type of merchandise sold at that store is displayed, rather than specific items. As the shopper strolls a map displays his or her precise current

location in the mall. If an item displayed is selected by the shopper while browsing, the system alerts the shopper to the local retailer offering the same product for the lowest price, or announces the best local price. This search is restricted to the local mall, as that is the assumed radius the shopper is willing to travel.

(Column 47, line 57, to column 48, line 26.) Determining the “closest” store as in Fano, however, is different than determining when the device is located “within the first site,” as claimed. As discussed above, Fano only discloses identifying “nearby stores” and “immediately surrounding stores” because of technological limitations. Thus, Fano does not disclose or suggest at least “determining whether a portable device is or is not located within a first site,” as recited in claim 1.

Further, the examiner does not contend that Swartz discloses “determining whether a portable device is or is not located within a first site,” as recited in claim 1. Thus, the Examiner has not satisfied the initial burden of establishing a prima facie basis to deny patentability to the claimed invention. Thus, at least for the foregoing reasons, Appellant submits that claim 1 is patentable over the combination of Fano and Swartz.

## **2. Claim 11**

Claim 11, which ultimately depends on claim 1, recites, “wherein the location information includes a location of each of the at least one selected item . . . .” As disclosed in Fano, “the item” selected by the shopper is not located at the “local retailer.” Instead, Fano discloses that the “same product” as “the item” selected by the shopper is at the “local retailer.” In other words, Fano discloses alerting the shopper to an alternate store carrying a product that is the same as the item selected by the user, i.e., a different store carrying a different item (albeit the different item is the same product as the selected item). Without explanation, the Examiner



acknowledges this distinction by stating that “alerting the user to an alternate 'local retailer' constitutes location information.” (Final Office Action at 4, underlining added here). Therefore, Fano does not disclose or suggest “sending location information,” where “location information includes a location of the at least one selected item,” as claimed.

Further, Swartz does not cure the deficiencies of Fano. Swartz also does not disclose or suggest “wherein the location information includes a location of each of the at least one selected item,” as recited in claim 11. Further, the Examiner does not contend that Swartz discloses or suggests this feature of claim 11.

In addition, claim 11 depends on claim 1 and includes all the features of claim 1. Because the combination of Fano and Swartz does not render claim 1 obvious, these references also cannot render claim 11 obvious.

Therefore, at least for the foregoing reasons, Appellant respectfully requests the withdrawal of the rejection of claim 11 under § 103(a).

### **3. Claims 4, 7, and 42**

In addition, claims 4, 7, and 42 depend on claim 1 and include all the features of claim 1. Because the combination of Fano and Swartz does not render claim 1 obvious, these references also cannot render claims 4, 7, and 42 obvious. Therefore, Appellant respectfully requests the withdrawal of the rejection of claims 1, 4, 7, and 42 under § 103(a).

### **4. Claims 12, 18, and 43**

Claim 12 recites, among other things, “determin[ing] whether the portable device is or is not located within a first site.” In addition, claim 12 recites, “receiv[ing] location information

regarding the at least one item selected from the menu of items at the first site from the server for displaying on the display.” The Examiner presents the same evidence for claim 12 as claim 1.

The combination of Fano and Swartz, however, does not disclose or suggest this combination of features. For example, Fano does not disclose or suggest “receiv[ing] location information regarding the at least one item selected from the menu of items at the first site from the server for displaying on the display,” as claimed. The Examiner cites to Fano, column 48, lines 22-25, alleging Fano discloses this feature. (See Final Office Action at p. 4.) This portion of Fano recites:

If an item displayed is selected by the shopper while browsing, the system alerts the shopper to the local retailer offering the same product for the lowest price, or announces the best local price.

The Examiner apparently equates “alert[ing] the shopper to the local retailer offering the same product for the lowest price,” as disclosed in Fano with “receiv[ing] location information regarding the at least one item selected . . . from the server for displaying on the display,” as claimed. (See Final Office Action at p. 4.) In particular, the Examiner equates the “local retailer” in Fano with “location information” as claimed. (Id.) This reading of claim 12 onto Fano is incorrect.

First, as disclosed in Fano, “the item” selected by the shopper is not located at the “local retailer.” Instead, Fano discloses that the “same product” as “the item” selected by the shopper is at the “local retailer.” In other words, Fano discloses alerting the shopper to an alternate store carrying a product that is the same as the item selected by the user, i.e., a different store carrying a different item (albeit the different item is the same product as the selected item). Without explanation, the Examiner acknowledges this distinction by stating that “alerting the user to an

alternate 'local retailer' constitutes location information.” (Final Office Action at 4, underlining added here). Therefore, Fano does not disclose or suggest “sending location information regarding the at least one item selected from the menu of items at the first site,” as claimed in claim 12.

Appellant respectfully submits that the disclosure of Swartz does not cure the deficiencies of Fano described above with respect to claim 12. More specifically, Swartz discloses a “portable terminal carried by a user and in wireless communication with a local area network for displaying data based on the physical location of the user.” (See Abstract.) Swartz also discloses “base stations located in a common area . . . for general information gathering processes.” (Col. 9, lines 38-41.) Swartz does not disclose or suggest “receiv[ing] location information regarding the at least one item selected from the menu of items at the first site from the server for displaying on the display,” as recited in claim 12. It should be noted that the Examiner does not contend that Swartz discloses or suggests this feature of claim 12.

In addition, Fano does not disclose or suggest “determin[ing] whether the portable device is or is not located within a first site,” as recited in claim 12. With respect to this feature, the Examiner cites to column 47, lines 20-24 of Fano, which states:

A preferred embodiment of a system utilizes a Windows CE PDA equipped with a GPS receiver. The embodiment is configured for a mall containing a plurality of stores. The system utilizes a GPS receiver to determine the user's location. One advantage of the system is that it enables the retrieval of data for nearby stores without relying on the presence of any special equipment at the mall itself. Although the accuracy of smaller, inexpensive receivers is limited to approximately 75-100 feet, this has thus far proven to be all that is necessary to identify accurately the immediately surrounding stores.

Appellant submits that neither this section nor any other section of Fano discloses or suggests

determining whether the portable device is or is not located within a first site, as recited in claim 12. This section of Fano cited by the Examiner only discloses identifying “nearby stores” and “immediately surrounding stores.” In fact, the portion cited to by the Examiner discloses that, because of the limitations of the accuracy of receivers, the system in Fano only determines “nearby stores” and “immediately surrounding stores.” Thus, according to the reference itself, the system in Fano does not disclose “determin[ing] whether the portable device is or is not located within a first site,” as recited in claim 12 (underline added here). Indeed, Fano describes the technical limitations as an “advantage,” thus teaching away from “determining whether a portable device is or is not located within a first site,” as recited in claim 12. (See, e.g., Fano, col. 47, lines 20-24.)

With respect to this element of claim 12, the Examiner equates “a store closest to the user” as allegedly taught in Fano with “a first site” as claimed (e.g., “[a] store closest to the user containing items of interest constitutes a first site.”) (See Final Office Action at p. 3.) The Examiner also equates “when the device is within range of the store having items of interest” as allegedly taught in Fano with when the portable device is located within the first site, as claimed. (Id.) The portion of Fano cited by the Examiner, discusses the “closest store:”

#### Browsing

To address the need of many shoppers to visit malls or shop generally without a particular destination in mind. FIG. 27 illustrates a display in accordance with a preferred embodiment of the invention. The display operates in a browse mode for use by shoppers as they stroll through the mall. In browse mode the system suggests items of interest for sale in the stores currently closest to the shopper. An item is considered to be of interest if it matches the categories entered in the goals screen. If there are no items of interest, the general type of merchandise sold at that store is displayed, rather than specific items. As the shopper strolls a map displays his or her precise current location in the mall. If an item displayed is selected by the shopper while browsing, the system alerts the shopper to the local retailer offering the same

product for the lowest price, or announces the best local price. This search is restricted to the local mall, as that is the assumed radius the shopper is willing to travel.

(Column 47, line 57, to column 48, line 26.) Determining the “closest” store as in Fano, however, is different than determining when the device is located “within the first site,” as claimed. As discussed above, Fano only discloses identifying “nearby stores” and “immediately surrounding stores” because of technological limitations. Thus, Fano does not disclose or suggest at least “determin[ing] whether the portable device is or is not located within a first site,” as recited in claim 12.

Further, the examiner does not contend that Swartz discloses “determin[ing] whether the portable device is or is not located within a first site,” as recited in claim 12. Thus, the Examiner has not satisfied the initial burden of establishing a prima facie basis to deny patentability to the claimed invention. Thus, at least for the foregoing reasons, Appellant submits that claim 12 is patentable over the combination of Fano and Swartz.

Thus, for the foregoing reasons, Appellant submits that claim 12 is patentable over the combination of Fano and Swartz.

Claims 18 and 43 depend on claim 12 and include all the features of claim 12. Because Fano and Swartz do not render claim 12 obvious, these references also cannot render claims 18 and 43 obvious. Therefore, Appellant respectfully requests the withdrawal of the rejection of claims 12, 18, and 43 under § 103(a).

## **5. Claims 20, 21, 23, 24, and 44**

Claim 20 recites, among other things, “determin[ing] whether a portable device is or is not located within a first site.” The Examiner presents the same evidence for claim 20 as claim

1.

Fano does not disclose or suggest “determin[ing] whether a portable device is or is not located within a first site,” as recited in claim 20. With respect to this feature, the Examiner cites to column 47, lines 20-24 of Fano, which states:

A preferred embodiment of a system utilizes a Windows CE PDA equipped with a GPS receiver. The embodiment is configured for a mall containing a plurality of stores. The system utilizes a GPS receiver to determine the user's location. One advantage of the system is that it enables the retrieval of data for nearby stores without relying on the presence of any special equipment at the mall itself. Although the accuracy of smaller, inexpensive receivers is limited to approximately 75-100 feet, this has thus far proven to be all that is necessary to identify accurately the immediately surrounding stores.

Appellant submits that neither this section nor any other section of Fano discloses or suggests determining whether a portable device is or is not located within a first site, as recited in claim 20. This section of Fano cited by the Examiner only discloses identifying “nearby stores” and “immediately surrounding stores.” In fact, the portion cited to by the Examiner discloses that, because of the limitations of the accuracy of receivers, the system in Fano only determines “nearby stores” and “immediately surrounding stores.” Thus, according to the reference itself, the system in Fano does not disclose “determin[ing] whether a portable device is or is not located within a first site,” as recited in claim 20 (underline added here). Indeed, Fano describes the technical limitations as an “advantage,” thus teaching away from “determin[ing] whether a portable device is or is not located within a first site,” as recited in claim 20. (See, e.g., Fano, col. 47, lines 20-24.)

With respect to this element of claim 20, the Examiner appears to equate “a store closest to the user” as allegedly taught in Fano with “a first site” as claimed (e.g., “[a] store closest to the

user containing items of interest constitutes a first site.”) (See Final Office Action at p. 3.) The Examiner also equates “when the device is within range of the store having items of interest” as allegedly taught in Fano with when the portable device is located within the first site, as claimed. (Id.) The portion of Fano cited by the Examiner, discusses the “closest store:”

Browsing

To address the need of many shoppers to visit malls or shop generally without a particular destination in mind. FIG. 27 illustrates a display in accordance with a preferred embodiment of the invention. The display operates in a browse mode for use by shoppers as they stroll through the mall. In browse mode the system suggests items of interest for sale in the stores currently closest to the shopper. An item is considered to be of interest if it matches the categories entered in the goals screen. If there are no items of interest, the general type of merchandise sold at that store is displayed, rather than specific items. As the shopper strolls a map displays his or her precise current location in the mall. If an item displayed is selected by the shopper while browsing, the system alerts the shopper to the local retailer offering the same product for the lowest price, or announces the best local price. This search is restricted to the local mall, as that is the assumed radius the shopper is willing to travel.

(Column 47, line 57, to column 48, line 26.) Determining the “closest” store as in Fano, however, is different than determining when the device is located “within the first site,” as claimed. As discussed above, Fano only discloses identifying “nearby stores” and “immediately surrounding stores” because of technological limitations. Thus, Fano does not disclose or suggest at least “determin[ing] whether a portable device is or is not located within a first site,” as recited in claim 20.

Further, the examiner does not contend that Swartz discloses “determin[ing] whether a portable device is or is not located within a first site,” as recited in claim 20. Thus, the Examiner has not satisfied the initial burden of establishing a prima facie basis to deny patentability to the claimed invention.

Thus, at least for the foregoing reasons, Appellant submits that claim 20 is patentable over the combination of Fano and Swartz.

Claims 21, 23, 24, and 44 depend on claim 20 and include all the features of their respective base claim. Because Fano and Swartz do not render claim 20 obvious, these references also cannot render claims 21, 23, 24, or 44 obvious. Therefore, Appellant respectfully requests the withdrawal of the rejection of claims 20, 21, 23, 24, and 44 under § 103(a).

## **6. Claims 45, 46, and 47**

Claim 45 recites, among other things, “determining whether a portable device is or is not located within a first site.” The Examiner presents the same evidence for claim 45 as claim 1.

Fano does not disclose or suggest “determining whether a portable device is or is not located within a first site,” as recited in claim 45. With respect to this feature, the Examiner cites to column 47, lines 20-24 of Fano, which states:

A preferred embodiment of a system utilizes a Windows CE PDA equipped with a GPS receiver. The embodiment is configured for a mall containing a plurality of stores. The system utilizes a GPS receiver to determine the user's location. One advantage of the system is that it enables the retrieval of data for nearby stores without relying on the presence of any special equipment at the mall itself. Although the accuracy of smaller, inexpensive receivers is limited to approximately 75-100 feet, this has thus far proven to be all that is necessary to identify accurately the immediately surrounding stores.

Appellant submits that neither this section nor any other section of Fano discloses or suggests determining whether a portable device is or is not located within a first site, as recited in claim 45. This section of Fano cited by the Examiner only discloses identifying “nearby stores” and “immediately surrounding stores.” In fact, the portion cited to by the Examiner discloses that, because of the limitations of the accuracy of receivers, the system in Fano only determines



“nearby stores” and “immediately surrounding stores.” Thus, according to the reference itself, the system in Fano does not disclose “determining whether a portable device is or is not located within a first site,” as recited in claim 45 (underline added here). Indeed, Fano describes the technical limitations as an “advantage,” thus teaching away from “determining whether a portable device is or is not located within a first site,” as recited in claim 45. (See, e.g., Fano, col. 47, lines 20-24.)

With respect to this element of claim 45, the Examiner equates “a store closest to the user” as allegedly taught in Fano with “a first site” as claimed (e.g., “[a] store closest to the user containing items of interest constitutes a first site.”) (See Final Office Action at p. 3.) The Examiner also equates “when the device is within range of the store having items of interest” as allegedly taught in Fano with when the portable device is located within the first site, as claimed. (Id.) The portion of Fano cited by the Examiner, discusses the “closest store:”

#### Browsing

To address the need of many shoppers to visit malls or shop generally without a particular destination in mind. FIG. 27 illustrates a display in accordance with a preferred embodiment of the invention. The display operates in a browse mode for use by shoppers as they stroll through the mall. In browse mode the system suggests items of interest for sale in the stores currently closest to the shopper. An item is considered to be of interest if it matches the categories entered in the goals screen. If there are no items of interest, the general type of merchandise sold at that store is displayed, rather than specific items. As the shopper strolls a map displays his or her precise current location in the mall. If an item displayed is selected by the shopper while browsing, the system alerts the shopper to the local retailer offering the same product for the lowest price, or announces the best local price. This search is restricted to the local mall, as that is the assumed radius the shopper is willing to travel.

(Column 47, line 57, to column 48, line 26.) Determining the “closest” store as in Fano, however, is different than determining when the device is located “within the first site,” as

claimed. As discussed above, Fano only discloses identifying “nearby stores” and “immediately surrounding stores” because of technological limitations. Thus, Fano does not disclose or suggest at least “determining whether a portable device is or is not located within a first site,” as recited in claim 45.

Further, the examiner does not contend that Swartz discloses “determining whether a portable device is or is not located within a first site,” as recited in claim 45. Thus, the Examiner has not satisfied the initial burden of establishing a prima facie basis to deny patentability to the claimed invention.

Thus, at least for the foregoing reasons, Appellant submits that claim 45 is patentable over the combination of Fano and Swartz.

Claims 46 and 47 depend on independent claim 45 and include all the features of claim 45. Because Fano and Swartz do not render claim 45 obvious, these references also cannot render claims 46 and 47 obvious. Therefore, Appellant respectfully requests the withdrawal of the rejection of claims 45, 46, and 47 under § 103(a).

## **7. Claims 48 and 49**

Claim 48 recites, among other things, “determining whether a portable device is or is not located within a first site.” The Examiner presents the same evidence for claim 48 as claim 1.

Fano does not disclose or suggest “determining whether a portable device is or is not located within a first site,” as recited in claim 48. With respect to this feature, the Examiner cites to column 47, lines 20-24 of Fano, which states:

A preferred embodiment of a system utilizes a Windows CE PDA equipped with a GPS receiver. The embodiment is configured for a mall containing a plurality of stores. The system utilizes a GPS

receiver to determine the user's location. One advantage of the system is that it enables the retrieval of data for nearby stores without relying on the presence of any special equipment at the mall itself. Although the accuracy of smaller, inexpensive receivers is limited to approximately 75-100 feet, this has thus far proven to be all that is necessary to identify accurately the immediately surrounding stores.

Appellant submits that neither this section nor any other section of Fano discloses or suggests determining whether a portable device is or is not located within a first site, as recited in claim 48. This section of Fano cited by the Examiner only discloses identifying “nearby stores” and “immediately surrounding stores.” In fact, the portion cited to by the Examiner discloses that, because of the limitations of the accuracy of receivers, the system in Fano only determines “nearby stores” and “immediately surrounding stores.” Thus, according to the reference itself, the system in Fano does not disclose “determining whether a portable device is or is not located within a first site,” as recited in claim 48 (underline added here). Indeed, Fano describes the technical limitations as an “advantage,” thus teaching away from “determining whether a portable device is or is not located within a first site,” as recited in claim 48. (See, e.g., Fano, col. 47, lines 20-24.)

With respect to this element of claim 48, the Examiner equates “a store closest to the user” as allegedly taught in Fano with “a first site” as claimed (e.g., “[a] store closest to the user containing items of interest constitutes a first site.”) (See Final Office Action at p. 3.) The Examiner also equates “when the device is within range of the store having items of interest” as allegedly taught in Fano with when the portable device is located within the first site, as claimed. (Id.) The portion of Fano cited by the Examiner, discusses the “closest store:”

#### Browsing

To address the need of many shoppers to visit malls or shop generally without a particular destination in mind. FIG. 27 illustrates a display in accordance

with a preferred embodiment of the invention. The display operates in a browse mode for use by shoppers as they stroll through the mall. In browse mode the system suggests items of interest for sale in the stores currently closest to the shopper. An item is considered to be of interest if it matches the categories entered in the goals screen. If there are no items of interest, the general type of merchandise sold at that store is displayed, rather than specific items. As the shopper strolls a map displays his or her precise current location in the mall. If an item displayed is selected by the shopper while browsing, the system alerts the shopper to the local retailer offering the same product for the lowest price, or announces the best local price. This search is restricted to the local mall, as that is the assumed radius the shopper is willing to travel.

(Column 47, line 57, to column 48, line 26.) Determining the “closest” store as in Fano, however, is different than determining when the device is located “within the first site,” as claimed. As discussed above, Fano only discloses identifying “nearby stores” and “immediately surrounding stores” because of technological limitations. Thus, Fano does not disclose or suggest at least “determining whether a portable device is or is not located within a first site,” as recited in claim 48.

Further, the examiner does not contend that Swartz discloses “determining whether a portable device is or is not located within a first site,” as recited in claim 48. Thus, the Examiner has not satisfied the initial burden of establishing a prima facie basis to deny patentability to the claimed invention.

Thus, at least for the foregoing reasons, Appellant submits that claim 48 is patentable over the combination of Fano and Swartz.

Claim 49 depends on independent claim 48 and includes all the features of claim 49. Because Fano and Swartz do not render claim 48 obvious, these references also cannot render claim 49 obvious. Therefore, Appellant respectfully requests the withdrawal of the rejection of claims 48 and 49 under § 103(a).

**B. The rejection of claims 10, 14, 15, 19, and 25 under 35 U.S.C. § 103(a) should be reversed.**

Claims 10, 14, 15, 19, and 25 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fano in view of Swartz and Perkowski. This rejection is respectfully traversed.

Claims 10, 14, 15, 19, and 25 depend on one of independent claims 1, 12, or 20 and include all the features of their respective base claim. As discussed above, Fano and Swartz do not disclose or suggest all the features of independent claims 1, 12, or 20. Appellant respectfully submits that the disclosure of Perkowski does not cure the deficiencies of Fano and Swartz described above with respect to claims 1, 12, and 20. Perkowski discloses an internet-based consumer service to carry out service-related functions along the demand side of a retail chain. See Abstract. Appellant submits that Perkowski does not disclose or suggest, for example, determining whether a portable device is or is not located within a first site, as required by claims 10, 14, 15, 19, and 25.

Because none of Fano, Swartz, or Perkowski, alone or in reasonable combination, disclose or suggest all the features of claims 10, 14, 15, or 25, Appellant respectfully requests the withdrawal of the rejection of claims 10, 14, 15, 19, and 25 under § 103(a).

**C. The rejection of claim 16 under 35 U.S.C. § 103(a) should be reversed.**

Claim 16 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fano in view of Swartz and Ludtke. This rejection is respectfully traversed.

Claim 16 depends on claim 1. The disclosure of Ludtke does not cure the deficiencies of Fano and Swartz described above with respect to claim 1. Ludtke discloses a “system and

method for locating items.” See Abstract. However, none of Fano, Swartz, or Ludtke, alone or in reasonable combination, disclose or suggest determining whether a portable device is or is not located within a first site, as required by claim 1.

Because none of Fano, Swartz, or Ludtke, alone or in reasonable combination, discloses or suggests all the features of claim 16, Appellant respectfully requests the withdrawal of the rejection of claim 16 under § 103(a).

**D. The rejection of claims 17 and 26 under 35 U.S.C. § 103(a) should be reversed.**

Claims 17 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fano in view of Swartz and Malackowski. This rejection is respectfully traversed.

Claims 17 and 26 depend independent claims 12 or 20, respectively, and include all the features of their respective base claims. As discussed above, Fano and Swartz do not disclose or suggest all the features of claims 12 or 20. The disclosure of Malackowski does not cure the deficiencies of Fano or Swartz identified above with respect to claims 12 and 20. None of Fano, Swartz, or Malackowski, alone or in reasonable combination, disclose or suggest determining whether a portable device is or is not located within a first site as required by claims 17 and 26.

Because none of Fano, Swartz, or Malackowski, alone or in reasonable combination, discloses or suggests all the features of claims 17 and 26, Appellant respectfully requests the withdrawal of the rejection of claims 17 and 26 under § 103(a).

**VIII. CONCLUSION**

In view of the foregoing arguments, Appellant respectfully solicits the Honorable Board to reverse the Examiner's rejections of claims 1, 4, 7, 11, 12, 18, 20, 21, 23, 24, and 42-49. In addition, as Appellant's remarks with respect to the Examiner's rejections are sufficient to overcome the rejections, Appellant's silence as to assertions by the Examiner in the Final Office or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art) is not a concession by Appellant that such assertions are accurate or such requirements have been met, and Appellant reserves the right to analyze and dispute such in the future.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,  
HARRITY SNYDER, L.L.P.

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**IX. CLAIM APPENDIX**

Below is a listing of the claims subject to appeal.

1. A method comprising:

determining whether a portable device is or is not located within a first site; wherein  
when the portable device is located within the first site:

    sending a menu of items located at the first site to the portable device for  
displaying to a user,

    receiving from the portable device, a selection by the user of at least one item  
from the menu of items located at the first site, and

    sending location information regarding the at least one item selected from the  
menu of items at the first site to the portable device for displaying to the user; and

    wherein when the portable device is not located within the first site:

    sending to the portable device a menu of sites located within a vicinity of the  
portable device for displaying to the user, and

    receiving from the portable device a selection of a second site from the menu of  
sites by the user.

4. The method of claim 1, further comprising establishing a connection between the  
portable device and a server via a wireless connection or an optical connection.

7. The method of claims 1, wherein the first site includes a store and the second site  
includes a store.



10. The method of claim 42, further comprising:

sending the location information to the portable device via e-mail.

11. The method of claim 42, wherein the location information includes a location of each of the at least one selected item from the menu of items from the first site or the second site.

12. A portable device comprising:

processing logic;

an input device coupled to the processing logic;

a display coupled to the processing logic; and

a wireless communication interface coupled to the processing logic, wherein the processing logic:

determines whether the portable device is or is not located within a first site;

wherein when the portable device is located within the first site, the portable device:

receives a menu of items located at the first site for displaying to a user on the display,

receives a selection by the user of at least one item from the menu of items located at the first site and sends the selection of the at least one item from the menu of items located at the first site to a server, and

receives location information regarding the at least one item selected from the menu of items at the first site from the server for displaying on the display; and-

wherein when the portable device is not located within the first site, the portable device:

receives a menu of sites located within a vicinity of the portable device for outputting to the display, and

receives a selection by the user of a second site from the menu of sites and sends to the server the selection of the second site.

14. The device of claim 12, wherein the processing logic receives location information via e-mail.

15. The device of claim 43, wherein the input device includes a touch screen, and wherein the processing logic receives the selection of the at least one item-from the touch screen with one of an electronic pen, a stylus, or a finger in an area where a representation of each of the at least one item is displayed on the display.

16. The device of claim 43, wherein the input device includes a touch screen, wherein the processing logic receives the selection of the at least one item when the user writes a name of the at least one item on the touch screen with one of an electronic pen, a stylus, or a finger.

17. The device of claim 43, wherein the input device includes means for recognizing speech, wherein the processing logic-receives the selection of the at least one item when the user says a name of the at least one item.

18. The device of claim 43, wherein the processing logic sends the selection of the at least one item to the server via an e-mail message.

19. The device of claim 43, wherein the processing logic receives the location information from the server via an e-mail message.

20. A system comprising:  
a server including:  
first processing logic, and  
a communication interface connected to the first processing logic to communicate via one of a wireless connection or a wired connection, the first processing logic:  
determines whether a portable device is or is not located within a first site;  
wherein when the portable device is located within the first site, the first processing logic:  
sends a menu of items located at the first site to the portable device for displaying to a user,  
receives, from the portable device, a selection by the user of at least one item from the menu of items located at the first site,  
sends the location information regarding the at least one item from the menu of items at the first site to the portable device for display to the user; and  
wherein when the portable device is not located within the first site, the processing logic:  
sends to the portable device a menu of sites located within a vicinity of the portable device for displaying to the user, and

receives, from the portable device, a selection of a second site from the menu of sites by the user.

21. The system of claim 20, wherein the portable device comprises:  
second processing logic,  
an input device connected to the second processing logic,  
a display connected to the second processing logic, and  
a wireless communication interface connected to the second processing logic, wherein the second processing logic:

receives the selection of the at least one item from the user via the input device,  
sends the selection of the at least one item to the server,  
receives the location information regarding the at least one item from the server,  
and  
displays the location information on the display.

23. The system of claim 20, wherein the first processing logic sends an indication to the portable device indicating whether the portable device is located at a first site.

24. The system of claim 21, wherein the second processing logic further:  
displays at least one menu when the second processing logic determines that the device is not located at the first site, and

refrains from displaying the at least one menu when the second processing logic determines that the device is located at the first site.

25. The system of claim 21, wherein the input device comprises a touch screen, wherein the second processing logic receives the selection of the at least one item when the user touches the touch screen with one of an electronic pen, a stylus, or a finger in an area where a representation of the at least one item is displayed on the display.

26. The system of claim 21, wherein the input device comprises at least one of means for recognizing speech or means for recognizing a character written on a surface of the display of the device.

42. The method of claim 1, wherein when the portable device is not located within the first site, the method further includes:

sending to the portable device a menu of items located at the second site for displaying to the user;

receiving, from the portable device, a selection by the user of at least one item from the menu of items at the second site; and

sending location information regarding the at least one item selected from the menu of items at the second site to the portable device for displaying to the user.

43. The device of claim 12, wherein, when the portable device is not located within the first site, the processing logic:

receives a menu of items located at the second site for outputting to the display;

receives a selection of at least one item from the menu of items at the second site and sends to the server the selection of the at least one item from the menu of items at the second site; and

receives location information regarding the at least one item selected from the menu of items at the second site from the server for displaying on the display.

44. The system of claim 20, wherein when the portable device is not located within the first site, the first processing logic:

sends to the portable device a menu of items located at the second site for displaying to the user;

receives, from the portable device, a selection by the user of at least one item from the menu of items at the second site; and

sends location information regarding the at least one item from the menu of items at the second site to the portable device for display to the user.

45. A tangible computer-readable medium having a plurality of instructions for at least one processor, wherein when the instructions are executed by the at least one processor, the at least one processor performs the method comprising:

determining whether a portable device is or is not located within a first site;

wherein when the portable device is located within the first site:

    sending a menu of items located at the first site to the portable device for displaying to a user,

    receiving, from the portable device, a selection by the user of at least one item from the menu of items located at the first site, and

    sending location information regarding the at least one item selected from the menu of items at the first site to the portable device for displaying to the user; and

wherein when the portable device is not located within the first site:

    sending to the portable device a menu of sites located within a vicinity of the portable device for displaying to the user, and

    receiving from the portable device a selection of a second site by the user.

46. The tangible computer-readable medium of claim 45, wherein when the portable device is not located within the first site, the method further comprises:

    sending to the portable device a menu of items located at the second site for displaying to the user;

    receiving, from the portable device, a selection by the user of at least one item from the menu of items at the second site; and

    sending location information regarding the at least one item selected from the menu of items at the second site to the portable device for displaying to the user.

47. The tangible computer-readable medium of claim 46, wherein the first site is a store and the second site is a store.

48. A method comprising:  
determining whether a portable device is or is not located within a site;  
sending to the portable device, when the portable device is determined to be located within the site, a menu of items located at the site for displaying to a user of the portable device;  
and  
sending to the portable device, when the portable device is determined not to be located within a site, a menu of sites located within a vicinity of the portable device for displaying to the user.

49. The method of claim 49, further comprising:  
receiving, from the portable device, a selection by the user of at least one item from the menu of items located at the site, and  
sending location information regarding the at least one item selected from the menu of items at the site to the portable device for displaying to the user.



APPEAL BRIEF

PATENT  
U.S. Application No. 10/774,372  
Attorney Docket No. SKY03005

X. EVIDENCE APPENDIX

None

XI. RELATED PROCEEDINGS APPENDIX

None